

REMARKS

This patent application presently includes claims 22-38 are original, all of which stand rejected. Claims 1 and 37 are amended to define the applicant's invention more clearly, and all rejections are respectfully traversed.

In the Office Action, all claims are rejected under 35 U.S.C. § 103 as being obvious over Iwama (U.S. Patent No. 6,600,735), in some instances in combination with Elliott et al. (U.S. Patent No. 6,614,781, hereafter Elliott). These rejections are respectfully traversed. Neither reference, nor the combination thereof, renders the present claims obvious.

The undersigned agrees with the examiner's contention that Iwama discloses a first telephony network (PSTN network 104-a), a second telephony network (PSTN 104-b), and a packet-switched data network (Internet 110) bridging the two telephony/PSTN networks. However, that is where the similarity ends, to the extent relevant to the present invention. In fact, Iwama discloses nothing more than the prior art approach of simply setting up the connection through the data network without regard to the status of the telephony networks.

In contrast, Claims 22 and 37 require receiving information on resource status in the second telephony network at an interface for the first telephony network in the packet switched network, and when such information indicates that resources are available in said second telephony network to complete setup of the call therein, implementing call setup for the call through the packet switched data network with a separate call signaling protocol, there being no communication path for the call through the packet switched data network prior thereto.

The Examiner contends that Iwama's step of "determining the destination gateway prior to sending the call" teaches or suggests these features. In truth, Iwama's step of "determining the destination gateway" occurs within the data network, and this step could not possibly correspond to

the step of obtaining information about the second telephony/PSTN network. Moreover, this, at least in part, is actually setting up the data network and teaches away from refraining to do so until information is available about resources in the second telephony network.

This contention by the examiner was discussed in the last amendment and is repeated here for the examiner's convenience.

In the primary embodiment of Iwama, the "second telephony network" would logically correspond to PSTN 104-b. However, the OA refers to the earlier step involving the "destination gateway". Notably, however, the gateways 102 of Iwama are *not* in either of the PSTN networks, but rather within Iwama's *data network*, that is, Internet 110. Thus, Iwama's step of "determining the destination gateway" does *not* correspond to determining resource status in the second telephony network, so information related to source status in the second telephony network (as claimed) is not received. Similarly, call setup in the data network does not occur after such information is received. Also, since information on the availability of the remote end of the data network is received in Iwama, it cannot be said that there is no communication path through the data network.

Separately, Iwama describes a sequence of events for setting up a phone call between two PSTNs bridged by a data network that specifically contradicts the limitations of claims 22 and 37 in which call setup in the data network is implemented after information about the second telephony network is received at an interface between the first telephony network and the data network.. Reference is made to Figures 1 and 3 of Iwama and the text in columns 8-9 thereof. Figure 1 of Iwama is a diagram of a communication system including two PSTNs bridged by a data network. Figure 3 is a sequence diagram of a call connection between a calling side PSTN terminal and a called side PSTN terminal. Figure 3 shows both the sequence of events in the call and the entities participating in the respective events. The preliminary steps are omitted in this section for the sake of brevity, but can be

readily identified by viewing Figure 3 and the corresponding text of Iwama.

Iwama recites “the gateway device (102-a) notifies a call setup to the gateway device (102-b) according to the call establishment procedure of ITU-T H.323 shown in FIG. 2, for example (S306 to S309)” (emphasis added). See col. 8, line 64 to col. 9, line 1. Steps 306-309, discussed above, are illustrated in Figure 3. Notably, in Figure 3, no activity involving second telephony network PSTN 104-b prior to or during step 306-309 is shown. Iwama recites that, later in the call sequence, “gateway device ... *then* transmits the setup message to the *PSTN* (104-b).” See col. 9, lines 1-5 (emphasis added). The foregoing confirms that the call setup in the data network of Iwama occurs before any activity occurs that involves the second telephony network of Iwama. Thus, the described operation of the Iwama system contradicts the above-quoted features of claim 22.

In the face of this evidence, the examiner takes the position that “Iwama does not specifically teach internal “implementation call setup within said packet switch data network is carried after information and resources status in the second telephony network is available.” However, he asserts that “it would have been obvious to unavoid those skilled in the art at the time the invention was made to check the availability of the second/other network prior to setup any calls”, stating “this limitation is old and well known feature in the art of telephony.” However, he has failed to cite any prior art in support of this assertion. It is therefore clear that, based upon the record, this rejection is based upon facts within the examiner’s personal knowledge. The undersigned therefore calls upon the examiner, pursuant to 37 C.F.R. §1.104(d)(2) to support this rejection by his affidavit, which shall be subject to contradiction or explanation by the affidavits of appropriate experts.

In any event, it has been demonstrated above that Iwama sets up a communication path between the two ends of the data network before receiving any information about the availability of the second telephony network and therefore, does not only fail to teach or suggest specific steps in

claims 22 and 37, but teaches away from them. In view of the advantages in efficient use resources achieved by the claimed invention, it could hardly be contended that the claimed subject matter is obvious. If it were obvious, the attended advantages would have resulted in the subject matter being used by the prior art instead of setting up the data network communication path independently of the availability of telephony network resources. The present application makes it clear that this is the disadvantageous approach utilized in the prior art and, as has been demonstrated, by Iwama. Accordingly, failing any additional evidence in the record relating to the claimed subject matter, claims 22 and 37 are allowable. The remaining claims, being dependent from claims 22 or 37, are allowable over Iwama based upon their dependence from an allowable claim.

Claims 24-27, 30, 32, 34 and 37 were also rejected as obvious over Iwama in view of Elliott. This rejection is respectfully traversed. Neither reference, nor the combination thereof renders these claims obvious.

Elliott adds nothing to Iwama in terms of the allowable features discussed specifically above. Accordingly, independent claims 22 and 37 remain patentable, despite the combination of Elliott with Iwama. The remaining claims depend from claims 22 or 37 and are allowable based upon their dependence from an allowable claim.

Applicant's attorney has made every effort to place this patent application in condition for allowance and to demonstrate that all claims are currently allowable. Favorable review of this application, as a whole and allowance of all claims as presently constituted are therefore respectfully solicited. Should there remain any unanswered questions, the examiner is requested to call the undersigned attorney at the telephone number indicated below.

Applicant has paid all fees believed to be due with this amendment. However, should it be determined that any additional fees are due, the Director is authorized to charge such fees to our

Deposit Account No. 50-4711.

Respectfully submitted,

KAPLAN GILMAN & PERGAMENT LLP
1480 Route 9 North, Suite 204
Woodbridge, New Jersey 07095
Telephone (732) 636-4500

Dated: March 30, 2010

By: /Joseph B. Lerch/
Joseph B. Lerch
(Reg. No. 26,936)